

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO

JOSEPH OLLIE,)	CASE NO. 4:17 CV 1304
)	
Petitioner,)	JUDGE JAMES S. GWIN
)	
v.)	
)	OPINION & ORDER
WARDEN MERLAK,)	
)	
Respondent.)	

INTRODUCTION

On June 6, 2017, petitioner *pro se* Joseph Ollie, an inmate at the Federal Correctional Institution at Elkton (“FCI Elkton”), filed the above-captioned habeas corpus action under 28 U.S.C. § 2241. The petition indicates Mr. Ollie was convicted in the United States District Court for the Western District of Pennsylvania in 2014 of various gun related offenses. As grounds for the petition, he asserts ineffective assistance of counsel for: 1) failure to challenge use of an old conviction in sentencing; 2) failure to challenge Presentence Investigation (PSI) findings that resulted in an enhanced sentence; 3) failure to object to errors in the PSI; and, 4) failure to raise issues concerning the PSI on appeal. For the reasons stated below, this action is dismissed.

LAW AND ANALYSIS

Habeas corpus petitions brought pursuant to 28 U.S.C. § 2241 address the execution of a sentence, while motions filed pursuant to 28 U.S.C. § 2255 test the validity of a judgment and sentence. *Capaldi v. Pontesso*, 135 F.3d 1122, 1123 (6th Cir. 1998)(citing *United States v. Jalili*, 925 F.2d 889, 893 (6th Cir. 1991)). Section 2255 provides in pertinent part:

[a]n application for a writ of habeas corpus in behalf of a prisoner who is authorized to apply for relief by motion pursuant to this section, shall not be entertained if it appears that the applicant has failed to apply for relief, by motion, to the court which sentenced him, or that such court has denied him relief, unless it also appears that the remedy by motion is inadequate or ineffective to test the legality of his detention.

28 U.S.C. § 2255.

The terms "inadequate" or "ineffective" do not mean that habeas corpus relief is available whenever a federal prisoner faces a substantive or procedural barrier to § 2255 relief, including the denial of a previously filed section 2255 motion. *Charles v. Chandler*, 180 F.3d 753, 756 (6th Cir. 1999). Rather, the "savings clause" applies when the failure to allow some form of collateral review would raise "serious constitutional questions." *Frost v. Snyder*, 13 Fed.Appx. 243, 248 (6th Cir. 2001)(unpublished disposition)(quoting *Triestman v. United States*, 124 F.3d 361, 376 (2d Cir. 1997)). The petitioner bears the burden of proving that the section 2255 remedy is inadequate or ineffective. *Charles*, 180 F.3d at 756 (citing *McGhee v. Hanberry*, 604 F.2d 9, 10 (5th Cir. 1979)).

Mr. Ollie seeks to raise issues that could and must be raised in a 2255 motion. The petition sets forth no reasonable suggestion of a proper basis on which to instead raise these issues pursuant 28 U.S.C. § 2241, or that "serious constitutional questions" require further consideration of his claims.

CONCLUSION

Accordingly, this action is dismissed pursuant to 28 U.S.C. § 2243. This dismissal is without prejudice to any potential claim that Petitioner Ollie may have to challenge his conviction under 28 U.S.C. § 2255 in the court of conviction, the Western District of Pennsylvania. The court certifies, pursuant to 28 U.S.C. § 1915(a)(3), that an appeal from this decision could not be taken in good faith.

IT IS SO ORDERED.

Dated: August 23, 2017

s/ James S. Gwin

JAMES S. GWIN

UNITED STATES DISTRICT JUDGE